only for its individual facts. It is still too early to say that the courts will evolve a flexible attitude towards secondary picketing and therefore legislative action may be necessary to properly treat this sensitive area.

As in all labour problems, the prime question is "Is there enough time for the remedy to evolve?"

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CERTIORARI AND PROHIBITION AND THE EXERCISE OF STATUTORY JURISDICTION

It is clear that, for better or worse, certiorari and prohibition are available only in connection with the exercise of an authority or a jurisdiction which is derived from statute.

In the recent case of *Hudson Bay Mining and Smelting Co. Ltd. v. Flin Flon Base Metal Workers' Federal Union No. 172* et al,[1] which involved an award made by a board of arbitration constituted pursuant to a collective bargaining agreement, Mr. Justice Dickson in *obiter*, indicated in effect that certiorari would not have lain against the board because it was not exercising a statutory jurisdiction; the learned judge cited the case of *Howe Sound Co. v. International Union of Mine, Mill and Smelter Workers (Canada) Local 663*,[2] as his authority.

Such a board of arbitration, that is to say the jurisdiction of such a board of arbitration, has been characterized as being non-statutory or private in nature as a result of the interpretation of legislation such as the Industrial Relations and Disputes Investigation Act[3] (which was the relevant legislation in the *Hudson Bay Mining and Smelting Co. Ltd.* case, *supra*) and other similar provisions to be found in the statutes governing labour relations in other provinces.[4] Generally speaking, this legislation requires that every collective bargaining agreement contain a provision for final settlement without stoppage of work, *by arbitration or otherwise*, of all differences between the parties to the agreement.

The key issue in the interpretation of this legislation has been the determination of the degree of compulsion which this legislation places upon the parties to a collective bargaining agreement to submit their differences or disputes to a board of arbi-

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1. (1966) 58 W.W.R. 165 (Man. Q.B.).
2. (1962) S.C.R. 318.
3. R.S.C. 1952, c. 152, s. 19(1).
4. British Columbia, R.S.B.C. 1960, s. 22, as amended by S.B.C. 1963, c. 20, s. 3; Alberta R.S.A. 1955, c. 167, s. 73(5) as amended by S.A. 1964, c. 41 s. 12; Manitoba, R.S.M. 1954, c. 132, s. 19; New Brunswick, R.S.N.B. 1952, c. 124, s. 18(1); Nova Scotia, R.S.N.S. 1954, c. 295, s. 19(1); Prince Edward Island, S.P.E.I. 1962, c. 18, s. 23(1); and Newfoundland, R.S.N. 1952, c. 258, 19(1).

tration. In the *Howe Sound Co.* case, *supra*, which was followed on this point in *Western Plywood (Alberta) Limited v. International Woodworkers of America Local 1-207 and Ewaschuk*,[5] the Supreme Court of Canada pointed out that, by virtue of the wording, arbitration is not the only means made available for the settlement of differences or disputes. Therefore, since the parties are not compelled to submit their differences or disputes to arbitration, the inclusion of an arbitration clause in a collective bargaining agreement creates a purely contractual jurisdiction as opposed to a statutory jurisdiction.

The Supreme Court of Canada in the *Howe Sound Co.* case, *supra*, in effect, distinguished the comparable Ontario legislative provision[6] on the basis that it includes no term such as "or otherwise"; consequently, arbitration is the sole means for settling differences or disputes — see also, *Re The International Nickel Company of Canada Limited and Rivando*.[7]

The courts should avoid a "forms of action" approach in connection with the vehicles for reviewing the exercise of special authority. In other words, the courts ought to be more concerned with the substance of the review sought than the vehicle used to initiate the review. It is submitted that insofar as a board of arbitration constituted pursuant to collective bargaining agreement is concerned, the courts ought to entertain applications for certiorari or prohibition in view of the fact that the inclusion of an arbitration clause in a collective bargaining agreement is statutorily sanctioned. Despite the fact that arbitration may not be the compulsory or only means statutorily provided for settling differences or disputes between parties to a collective bargaining agreement, it cannot be gainsaid that the power to include an arbitration clause in a collective bargaining agreement is derived from statute. That is to say, such a board of arbitration exercises a statutory jurisdiction.

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5. (1964) 47 W.W.R. 426 (Alta. S.C.).
6. R.S.O. 1960 c. 202, 34(1).
7. (1956) O.R. 379.

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